IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 481 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-Yes.**

2 To be referred to the Reporter or not ? **-Yes.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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UNION OF INDIA - Appellant(s)
Versus
VIRANI CONSTRUCTION CO. & 1 - Defendant(s)

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Appearance :

MS MEGHA JANI for Appellant(s) : 1,
MR MG NAGARKAR for Defendant(s) : 1,
NOTICE SERVED for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 27/06/2007

ORAL JUDGMENT

1. Union of India, through General Manager, appellant has filed this appeal under Section 39 of the

Arbitration Act, 1940 against the judgment, award and decree dated 18/2/1993 passed by the learned City Civil Court, Ahmedabad in Misc. Civil Application No.883 of 1988 and Misc. Civil Application No.957 of 1988. By the impugned judgment, the learned Judge was pleased to dismiss the Misc. Civil Application No.957 of 1988 and as regards Misc. Civil Application No.833 of 1988, the learned Judge has held that; the award filed by the Arbitrator, subject to the modification stated in the Judgment, is ordered to be made Rule of the Court. Railways shall pay to the contractor a sum of Rs.50,679/- with interest on Rs.33,390/- at the rate of 9% per annum from 27/5/1988 till the date of payment. The parties shall bear their own costs.

2. The learned Trial Judge has observed that the Arbitrator has erred in awarding Rs.1921/- as interest in the final bill amount although the said claim was not referred to him in the terms of reference. The said contentions appears to be well-founded, but as the award of the said amount is severable, the said amount can be deleted from the final amount awarded. Thus, the result is

that under the award, the contractor will be entitled to total amount of Rs.50,679/-. However, the amount awarded on claim no.1 and 2 comes to Rs.33,390/-, and rest of the amount is the amount of interest. The said amount of Rs.33,390/- shall carry further interest at the rate of 9% from the date of award till the date of payment. The learned Judge has further observed that in view of the above discussion, the challenge to the validity of the Award fails and the Award has to be made rule of the Court subject to the modification as stated above.

3. The facts giving rise to the petition are as under:

3.1) The Executive Engineer, Western Railway, Jamnagar has invited tenders for construction of approach road and circulating area for goods shed in Khambhalia Railway Station Yard in connection with V.O.P. Project. The contractor who is opponent no.1 in C.M.A.No.957 of 1988 submitted his tender along with other tenderers. His tender was accepted and the acceptance was conveyed to him by letter dated 19/11/1983. According to the

Railway Administration, the work was required to be completed within four months i.e. on or before 18/3/1984. It was alleged that it could not be completed within stipulated time due to failure on the part of the contractor and at his request, completion date was extended up to 30/6/1984 on three occasions. The work was completed on 27/4/1984.

3.2) The Contractor submitted his claims by notice dated 11/2/1985 under Clause 63 (new) of the General Conditions of Contract. The applicant replied to the said notice on 20/2/1985. The contractor sent another notice dated 12/3/1985 under Clause 64 and 64(3) of G.C.C. (General Conditions of Contract). He also addressed statutory notice under Section 80 of the C.P.C. on 8/4/1985. It appears that the opponent also addressed a notice dated 28/5/1985 under Section 8(1)(c) of the Arbitration Act. The applicant replied to the said notice on 18/6/1985.

3.3) Thereafter, the Contractor filed C.M.A. No.289 of 1985 under Section 8 of the Arbitration Act which provides for power of court to appoint

arbitrator or umpire and Section 9 of the Arbitration Act which provides for power to party to appoint New Arbitrator r in certain case a Sole Arbitrator. The learned City Civil Judge decided the said application by the dated 30/6/1986. The General Manager of the Western Railway was directed to appoint an Arbitrator to resolve the disputes and difference between the parties as per clause 63 and 64 of G.C.C. within three months from the date of the order. The said time was extended by the Court up to 15/12/1986.

3.4) The General Manager, Railway has appointed one Shri H.G.Patel, Senior Division Engineer, Western Railway, Rajkot as the sole arbitrator on 10/12/1986 pursuant to the order of the City Civil Court.

3.5) Before the Arbitrator, the contractor filed his statement of Claims. He presented four claims. Claim No.1 was for the value of the work done, but not paid permissible at tendered rate and at at new rates for the quantities of work carried out in excess. This claim was in two parts. Claim 1 (a) was for the work done at

tendered rate and after giving details he made claim for Rs.1,12,850.73 paisa and Claim 1 (b) was for additional and extra work done and he made a claim for Rs.67,503.06. He had already received Rs.1,46,737.67 from the Railway and hence he made claim for the balance amount of Rs.33,616.06. He had already received Rs.1,46,737.67 from the Railway and hence he made claim for the balance amount of Rs.33,616.12. On Claim No.2, his case was that he was not able to utilize his full force of establishment, labour and machineries as the Railways failed and neglect to hand over uninterrupted and exclusive possession of the site and failed to supply the road Roller. The break up of the claim is as follows:

Sr. No.	Particulars	Amount
1	Expenses ideal establishment	14,000/-
2	Expenses of idle payment of labour both skilled and unskilled	40,000/-
3	Staff's lodging and boarding	5,000/-
4	Idle machineries charges, truck, etc.	84,000/-
5	Additional traveling and Misc. expenses	2,000/-
	TOTAL	1,45,000/-

3.5.1) Claim No.3 was for interest as follows:

(a) 18% running interest on Rs.21,297/- the amount of final bill form due date of payment till realization.

(b) 18% running interest on Rs.13,505/- the amount of security deposit from due date of payment till realization.

(c) 18% running interest on the amount of claim Nos.1 and 2 from 11/2/1985 till realization.

3.5.2) In Claim No.4, he claimed for costs for arbitration proceedings.

3.6) The Railways filed their reply to the said statement of claim. It was contended that it was the contractor who had committed breach of the terms of the contract and he was not entitled to any of the claims. On Claim No.1, their reply was as follows:

3.6.1) “The payment of work executed by the claimant has been paid as per measurements recorded in presence of the claimant. In token of having accepted the measurement, claimant had signed the measurement book as well as variation

statement. For the quantity of works done by claimant has also been accepted vide his letter dated 10/8/1984. The averments made by the claimant is after though and baseless. It is submitted that in the original contract, the work was to be carried out with Railway's Road Roller, but the roller was out of order which had taken some time, in the mean time the claimant has mutually agreed to complete the work with his own Road Roller and given his willingness vide his letter dated 8/3/1984 and hence to avoid delay in completion of works. SOR (Schedule of Rate) items provided in the original work order have been deleted and SOR items with contractor's Road Roller were operated although respondent Railway had to pay higher rate than originally provided in the work order and the claimant was paid as mutually agreed by claimant in this contract as well as through Quotation No.XEN © II/JAM/58-A and hence nothing is outstanding to be paid."

3.6.2) In this contract, the quantity provided in the Work Order and quantity executed as mutually agreed by the claimant are as under:

Sr. No.	SOR item No.	Qty. provided in W.O.	Qty. executed by the claimant	Qty. paid by the Respondent	Remarks
1	1405(b)	6500	5530.27	5530.27	Separate payment for Road Roller given in Quotation No.XEN(C)II/JAM/58-A.
2	1409(a)	6500	6740.02	6740.02	-do-
3	1411(a)	6500	7412.52	7412.52	This item operated as per mutual agreement deleting Item No.1411(b).
4	1416(a)	6500	7256.21	7256.21	This item operated as per mutual agreement deleting Item No.1416(b).
5	2429	165	177.11	177.11	-
6	1413(a)	-	330.00	330.00	-
7	1/NS	-	355.00	355.00	-

3.6.3) The quantity of works carried out by the claimant has been paid as per the measurement recorded by the Inspector of Works in presence of the claimant which has also been accepted by the claimant himself by recording certificate in the measurement book No.CEN(C)I/JAM/1774/99 at page 177320. The claimant has agreed to execute the work of goods/passenger platform at Khambhalia. NO tender for the similar work was accepted at

800% above SOR. However, the rates received for similar type of work carried out against the following tender are as under from which it is clear that the claimant's contention for demanding 800% above SOR (Schedule of Rate) is not correct because he himself agreed mutually to complete the work at accepted tendered rate and also signed the variation statement without any protest.

Sr. No.	Tender No. & brief description of work	Rate accepted	Date of acceptance
1	XEN(C)II/JAM/162-Raising of passenger platform and goods platform at Khambhalia.	363% above old SOR and Rs.29.43 for N.S.Ite..	2/1/1985
2	XEN(C)I/JAN/328-Providing soling & metaling in circulating area and approach road at JAM Station.	467% above old SOR 3	21/5/1984
3	XEN(C)IJAM/341-Providing asphaltic carpet with contractor's own soling and metaling at L.C. No.191 Jamnagar.	480% above old SOR Rs.14/- per Sq.m. For NS Item	26/7/1984

3.6.4) Thus the claim no.1 is outside the scope of contract agreement”.

3.6.5) On Claim No.2, their reply was as follows:

“The site was already handed over in the month of

November, 1983 and the work was started by the claimant on 30/12/1983. The plan was also handed over vide Respondent's letter No.VOP/JAM/W/565/5 dated 23/11/1983 (R/13) Railway's Road Roller was not in working condition and it would have taken some time up to 15 days to put the same in working condition. In the mean time, claimant mutually agreed to complete the work with his Road Roller and hence same was permitted and payment arranged accordingly. There was no delay on account of respondent. However, completion date was extended up to 30/6/1984 without penalty with a clear understanding that the contractor is not entitled to claim damaged nor any increase in the rate/s on this account. This contract is governed under the General Conditions of contract and the extensions were granted under Clause 17 of GCC (General Conditions of Contract) which does not provide any compensation of this nature as such all the Claims Nos.2(a), (b), (C) and (d) are outside the scope of Agreement, for which claim wise remarks are as under:

2(a) As already stated above, there was no delay on the part of the respondent. The

extension of time limit were given without penalty on the request of the claimant with the clear understanding that he will not be entitled to claim any extra payment for the extended period. Hence, the claim for idle establishment for Rs.14,000/- is refunded.

2(b) This is a repetition of claim no.2(a). This claim is already included in claim no.2(a).

2(c) This claim is also repetition of claim no.2(a). This expenditure is to be included in the establishment charges.

2(d) There was no delay on the part of respondent. The extensions were granted on the request of the claimant. Moreover, there was no machinery lying idle on the site of work. The truck is required for carting of materials like building materials etc., which will be stacked at site and could have been used as and when required for the work and as such the claim as put forth by the claimant is not acceptable.

2(e) The rates include all such expenses and the claimant have submitted the tender after consideration of all these facts. The claim is therefore, refuted.

3.6.6) On Claims Nos.3(A), (B) and (C), the reply was as follows:

"Claim No.3(A): This claim is not in terms of reference and hence outside the preview of arbitration. It is however, stated that the payment of final bill has already been made to the claimant, hence no amount if due to be paid. Moreover, no interest is payable on any sum due as per Clause 16(3) of GCC. The claim is outside the scope of agreement. The sum up, this claim is not arbitrable as it does neither from part of reference nor of the plaint (CMA No.289/85).

Claim No.3(B): The security deposit of Rs.13,505/- has already been refunded to the contractor after maintenance period is over and hence no due is outstanding to be paid to

contractor. Moreover, no interest is payable on any sum due as per clause 16 (3) of GCC. The claim is outside the scope of agreement.

Claim No.3(C): As there is no dues outstanding to be paid to the claimant as stated in claim no.1 and 2, question of interest does not arise. Moreover, no interest is payable on any sum dues as per Clause 16(3) of GCC. The claim is outside scope of contract agreement."

4. The contractor filed his rejoinder and reiterated his claims.

5. Both the parties produced documentary evidence in support of their respective cases.

Arbitrator's Award:

6. The arbitrator declared his Award on 27/5/1988. He has recited in the Award that he had heard the parties to the dispute and differences and had considered the documents produced by the parties before him. After considering the documentary evidence produced by the parties and considering

all the claims made by the contractor and defences made by the Railways, he made an Award of Rs.65,520/- in favour of the contractor and directed the Railways to pay the said amount within one month failing which the amount was to carry simple interest at the rate of 18%. he gave break up of the award as follows:

Claim No.	Amount claimed in Rs.	Amount awarded in Rs.	Remarks
1	33,616.12	19,465.00	For passenger platform work against item no.1411(a), 1416(a) Metaling work.
2(a)	14,000.00	2,800.00	
2(b)	40,000.00	7,800.00	
2(c)	5,000.00	900.00	
2(d)	84,000.00	11,100.00	
2(e)	2,000.00	Nil	
3(a)	18% interest on final bill amount of Rs.21,297/-	1,921.00	15% simple interest on final bill amount of Rs.19077/- from 1/9/1984 to 4/5/1985.
3(b)	18% interest on S. Deposit. Rs.13,505/-	755.00	15% simple interest on Security deposit of Rs.11,505/- from 1/1/1985 to 16/5/1985.
3(c)	18% interest on amount of claim no.1 and 2 from 11/2/1985 till realization	20,779.00	15%simple interest on Rs.42,605 awarded for claim no.1 and 2 above from 11/2/1985 to 27/5/1988.
4	Full cost of arbitration proceedings	Nil	
Total	1,78,616.12	65,520.00	

6.1) As regards cost of arbitration incurred by the parties, he directed each parties to bear its own costs.

7. As stated earlier, the Arbitrator filed the Award in Court on 5/9/1988. at that time he also filed an amendment which reads as follows:

7.1) This is a part of Award declared on 27/5/1988.

Amendment in Award:

7.2) As per the Arbitration Act, hereby issue amendment to the Award declared by me on 27/5/1988 as under due to calculation error in the item No.1 and 3 (c) i.e. interest thereon. The calculation error was due to the rates adopted as per new SOR instead of old SOR of the work done on passenger platform:

Claim No.	Amount awarded originally in Rs.	Amount now to be read in Rs.
1	19,465.00	10,790.00
3(c)	20,779.00	16,494.00

7.3) As a result of the above amendment due to calculation error, total amount of Award payable is Rs.52,560/- instead of Rs.65,520/-.

7.4) Therefore, amended Award of Rs.52,560/- (Rupees fifty two thousand five hundred and sixty only) shall require to be paid to the claimants by the respondents up to 1/10/1988, failing which, it shall carry simple interest at the rate of 18% per annum.”

7.5) The result, is, therefore, that the arbitrator had passed an award of Rs.52,560/- in favour of the contractor with interest at 18% per annum if the railways failed and neglect to pay the said amount on or before 31/10/1988.

Proceedings after the Arbitration Award:

8. After the arbitrator filed his Award, the applicant has filed application under Section 14 of the Arbitration Act which provides for award to be signed and award to be made Rule of the Court. The said proceedings has been numbered as C.M.A.No.833 of 1988.

9. When the application was filed, the Court has issued notice to the Union of India. At that time, the Union of India filed an application under Section 30 which provides ground for setting aside the award read with Section 33 of the Act which provides that arbitration agreement or award to be contested by the application. The said application has been numbered as C.M.A. No.957 of 1988. In the said application, the contractor has filed his written reply opposing the prayer for setting aside the award.

10. Before the Trial Court, both the C.M.A. Nos.833 of 1988 ans 957 of 1988 were heard together.

Trial Court's Finding:

11. The learned City Civil Judge has considered the award of the Arbitrator and the contentions raised by the Contractor and Railway and after going through the same, made following observations and findings:

11.1) **Finding of the learned Judge regarding non-**

speaking award: Though in the application, it is contended that he had erred in giving a non-speaking award and that he was required to give reasons in support of his Award having regard to the facts and circumstances of the case, no provisions of the agreement was pointed out under which he was bound to give reasons in support of his award. The award cannot be challenged on the ground that it is a non-speaking award.

11.2) **Finding of the learned Judge in connection with legality and validity of the award of the Arbitrator:** The learned City Civil Judge has observed that the said contention was raised before the arbitrator and when the arbitrator in his award said that he had made the Award after hearing the parties and considering all the claims made by the contractor and defence made by the Railway, it follows that he had considered the contentions of the Railways that the claims fall outside the scope of the agreement and he had rejected the same. In the circumstances, it must be held that the arbitrator had considered and rejected the contentions of the Railways that the

claims fall outside the scope of agreement. The question whether the disputes are covered by the agreement was specifically referred to him and his decision cannot be interfered with on the ground of error of law apparent on the fact of the Award.

11.3) **Finding of the learned Judge claims made by the Contractor:**

11.3.1) Regarding merits of the claim nos.1 and 2, the learned advocate for the Union of India raised the same contentions on merits. The learned Judge has observed that the said contentions were also raised before the Arbitrator. The Arbitrator has considered all the defences raised by the Railways and the evidence produced by the parties and arrived at his decision. His award on both fact and law is final and there is no appeal from his verdict and the court cannot review his award and correct any mistake in his adjudication. When the arbitrator has given no reason for the Award and there is no legal proposition as basis of the Award, the contention that there are errors of law on the face of the Award cannot be accepted.

11.3.2) As regards claim no.3 which pertains to interest, it was submitted that no interest was payable under clause 16(3) under General conditions of contract. However, the learned advocate for the contractor cited the judgment of Calcutta High Court in the case of Union of India vs. Abhoy Sarkar and another, reported in AIR 1992 Calcutta 242 and drew the attention to para 13 of the judgment in which it is said that no doubt Clause 16(2) prohibits contractor in getting interest on the Security Deposit or other amount due from Railways, but the Railway Board had issued a Circular dated 25/10/1979 in which with reference to clause 16(2), it is observed that in view of the Interest Act, 1978, said Clause does not survive. It was not contended before the learned Trial Court that no such circular was issued by the Railway Board. It cannot be said that the agreement prohibits payment of interest. In the absence of any Clause in the agreement prohibiting payment of interest, the Arbitrator would be entitled to award interest on the amount awarded. In was contended that the Arbitrator has erred in awarding Rs.1921/- as interest in the

final bill amount although the said claim was not referred to him in the terms of reference. The said contention appears to be well-founded, but as the award of the said amount is severable, the said amount can be deleted from the final amount awarded. In the result, under the Award, the contractor will be entitled to total amount of Rs.50,679/-. However, the amount awarded on claim no.1 and 2 comes to Rs.33,390/-, and rest of the amount is the amount of interest. The said amount of Rs.33,390/- shall carry further interest at the rate of 9% from the date of Award till the date of payment.

11.3.3) In view of the above stated facts, the learned Judge has rejected the application and held that the Award be made Rule of the Court, subject to the modification as observed by him.

12. Being aggrieved and dissatisfied with the said order of the learned Trial Judge, this appeal has been filed.

Contentions on behalf of Railway in the Present Appeal:

13.Ms.Megha Jani, learned advocate with Ms.Anushri Kapadia, learned advocate appears for the appellant. The learned advocate has made following submissions.

13.1) Finding of the learned Judge that the arbitrator was required to be given reasons in support of the award having regard to the facts and circumstances of the case, no provisions of the agreement was pointed out under which he was bound to give reasons in support of his award and the award cannot be challenged on the ground that it is non-speaking award, is erroneous both on facts of the case and law and therefore, the award of the learned Judge is liable to be quashed and set aside.

13.2) The learned Judge has erred in upholding the award of the arbitrator because according to them, the arbitrator has acted beyond his jurisdiction and as certain schemes were not to be arbitrable and the arbitrator has given award and therefore, to that extent the arbitrator has acted beyond his jurisdiction.

13.2.A) In support of the same, the learned advocate has relied upon the some of the judgments of the Hon'ble Apex Court in the case of

(A) Rajasthan State Mines and Minerals Ltd. vs. Eastern Engineering enterprises, reported in (1999) 9 SCC 283.

(B) Grid Corporation of Orissa Ltd. and another vs. Balasore Technical School, reported in (2000) 9 SCC 552.

(C) Union of India vs. G.S.Atwal & Co. (Asansole), reported in (1996) 3 SCC 568.

(D) T.N. Electricity Board vs. Bridge Tunnel Construction, reported in (1997) 4 SCC 121.

(E) Kandla Port Trust, Trustees of Board vs. Asia Foundation and Construction Limited, reported in 2001 (3) GLH 45.

14.On the other hand, Mr.M.G.Nagarkar, learned

advocate with Mr.Alpesh Parmar, learned advocate appears for Virani Construction. They have tried to support the judgment of the learned Trial Judge in this behalf. The learned advocates have submitted that once the arbitrator has given award and given cogent and convincing reasons and thereafter the Trial Court has upheld the award, this Court has extremely limited jurisdiction to interfere with the award of the arbitrator as well as finding of the learned Trial Court in connection with the legality and validity of the award of the arbitrator and therefore, this Court may not consider/entertain the appeal of the appellant and dismiss the appeal.

15. The learned advocate for the respondent has stated that if the Arbitrator has not committed any irregularities and there is mere error of law and for the same, the Court has no jurisdiction to consider the legality and validity of the Award.

Finding and observations regarding non speaking award:

16.The learned Trial Judge has rejected the contention regarding non-speaking award on the ground that the Railway has not been able to point out any provisions of agreement under which the Arbitrator was bound to give reasons in support of his award and on that ground, the learned Trial Judge has rejected the said contention. The learned advocate for the appellant has not been able to assail the aforesaid finding and he has not been able to point out any terms and conditions of agreement which provides for giving reasons by the Arbitrator in support of his award. So, on that ground alone, the finding of the learned Judge is required to be upheld.

16.1) Aforesaid finding can be also considered on slightly different ground. The question arose before the constitution bench of the Hon'ble Supreme Court as to whether the award should be speaking award or not? In this connection, I refer to the judgment of the Hon'ble Apex Court in the case of Raipur Development Authority etc. etc. vs. M/s. Chhokhamal Contractors etc. etc., reported in AIR 1990 SC 1426. In the said case, the Hon'ble Apex Court in para 19 at page 1435, observed as

under:

> “Para 19. It is now well-settled that an award can neither be remitted nor set aside merely on the ground that it does not contain reasons in support of the conclusion or decisions reached in it except where the arbitration agreement or the deed of submission requires him to give reasons.”

16.2) In para 19, the Hon'ble Apex Court has further observed as under:

> 16.2.A) “.... The arbitrator or umpire shall have to give reasons also where the court has directed in any order such as the one made under Section 20 or Section 21 or Section 34 of the Act that reasons should be given or where the statute which governs an arbitration requires him to do so.”

16.3) In para 20, sub para 4.48 at page 1437 of the said judgment, the Hon'ble Apex Court has observed as under:

16.3.A) “....No doubt, it is desirable that the award should be correct in law. But the fundamental question is, how far should the finality of the award yield to the desirability of legal correctness, and what procedural requirements should be insisted upon to ensure that the award is sound in law? In this connection, reference may be made to the observations of Barwick C. J. (of the High Court of Australia). (Tata Products Pvt. Ltd. vs. Hutcheson Bros. Pvt. Ltd. (1972) 127 CLR 253, 258: 1972 Australia Law Journal Reports 119 (Australia)). He observed that 'finality in arbitration in the award of the lay arbitrator is more significant than legal propriety in all his processes in reaching that award.

16.3.B) The importance which the law attaches to the finality of arbitration goes against the suggestion now put forth for giving reasons for an award. A requirement that the reasons for an award should be given would open too wide a door for challenging the award, even if the grounds for setting aside

are, by statute restricted in other respects.”

16.4) Ultimately, the Hon'ble Apex Court in para 38 of the said judgment at page 1446, held as under:

16.4.A) “.... In the result we hold that an award passed under the Arbitration Act is not liable to be remitted or set aside merely on the ground that no reasons have been given in its support except where the arbitration agreement or the deed of submission or an order made by the Court such as the one under Section 20 or Section 21 or Section 34 of the Act or the statute governing the arbitration requires that the arbitrator or the umpire should give reasons for the award.”

16.5) In this connection, I also rely upon the judgment of the Hon'ble Apex Court in the case of Rajendra Construction Co. vs. Maharashtra Housing & Area Development Authority and others, reported in (2005) 6 SCC 678, particularly in para 15 at page 685, the Hon'ble Apex Court has observed as under:

16.5.A) “After considering the relevant provisions of law, legal position in England,

America and Australia and after referring to leading decisions on the point, this Court held that an award passed under the (old) Act was not liable to be set aside or remitted only on the ground that no reasons had been recorded in support of such award. The Court also referred to the Hand Book of Arbitration Practice by Ronald Bernstein wherein it was stated: “The absence of reasons does not invalidate in award. In many arbitrations the parties want a speedy decision from a Tribunal whose standing and integrity they respect, and they are content to have an answer Yes or No; or a figure of X. Such an award is wholly effective; indeed, in that it cannot be appealed as being wrong in law it may be said to be more effective than a reasoned award.”

16.6) It may be noted that in para 20 and 21 of the said judgment also, the Hon'ble Apex Court has observed as under:

16.6.A) “Para 20. This Court noted that a consistent view has been taken by all courts that an award was not liable to be set aside

merely because reasons were not given except where the arbitration agreement or the deed of submission or an order made by the court under Section 20, 21 or 34 of the Act or the statute governing the arbitration required the arbitrator or umpire to give reasons for the award."

16.6.B. "Para 21. In our opinion, the ratio in Chokhamal i.e. Raipur case (supra) applies to the case on hand. The law laid down in that case has been reiterated by this Court in many cases. [See T.N. Electricity Board v. Bridge Tunnel Constructions-1997 (4) SCC 122, Kundale & Associates v. Konkan Hotels (P) Ltd.-(1999) 3 SCC 533 and Build India Construction System v. Union of India-(2002) 5 SCC 433].

Finding regarding legality and validity of the award:

17. As regards legality and validity of the award, in the earlier part of the judgment, I have discussed the finding of the learned Trial Judge. It may

also be noted that in this case, the award is non-speaking award and the award cannot be challenged on that ground as far as present matter is concerned which arose out of the Arbitration Act for which I have already referred to the Constitution Bench judgment. In view of the same, this Court has extremely limited jurisdiction to consider the legality and validity of the award in this behalf.

17.1) In this connection I refer to the judgment of the Hon'ble Apex Court in the case of **Rajasthan State Mines and Minerals Ltd. vs. Eastern Engineering enterprises, reported in (1999) 9 SCC 283.** In the said case, non-speaking award was challenged and the Hon'ble Apex Court in para 44 page 309 of the said judgment, observed as under:

"Para 44. From the resume of the aforesaid decisions, it can be stated that:

(a) It is not open to the court to speculate, where no reasons are given by the arbitrator has reached his conclusion where it is not disclosed by the terms of the award.

(b) It is not open to the court to admit to

probe the mental process by which the arbitrator has reached his conclusion where it is not disclosed by the terms of the award.

(c)If the arbitrator has committed a mere error of fact or law in reaching his conclusion on the disputed question submitted for his adjudication then the court cannot interfere.

(d)If no specific question of law is referred, the decision of the arbitrator on that question is not final, however much it may be within his jurisdiction and indeed essential for him to decide the question incidentally. In a case where a specific question of law touching upon the jurisdiction of the arbitrator was referred for the decision of the arbitrator by the parties, then the finding of the arbitrator on the said question between the parties may be binding.

(e) In a case of non-speaking award, the jurisdiction of the court is limited. The award can be set aside if the arbitrator acts beyond his jurisdiction.

(f) To find out whether the arbitrator has traveled beyond his jurisdiction, it would be necessary to consider the agreement between the parties containing the arbitration clause. The

arbitrator acting beyond his jurisdiction is a different ground from the error apparent on the face of the award.

(g) In order to determine whether the arbitrator has acted in excess of his jurisdiction what has to be seen is whether the claimant could raise a particular claim before the arbitrator. If there is a specific terms in the contract or the law which does not permit or give the arbitrator the power to decide the dispute raised by the claimant or there is a specific bar in the contract to the raising of the particular claim then the award passed by the arbitrator in respect thereof would be in excess of jurisdiction.

(h) The award made by the arbitrator disregarding the term of the reference or the arbitration agreement or the terms of the contract would be a jurisdictional error which requires ultimately to be decided by the court. He cannot award an amount which is ruled out or prohibited by the terms of the agreement. Because of a specific bar stipulated by the parties in the agreement, that claim could not be raised. Even if it is raised and referred to arbitration because of a wider arbitration

clause such claim amount cannot be awarded as the agreement is binding between the parties and the arbitrator has to adjudicate as per the agreement."

18. In this behalf, I have considered the judgment of the Hon'ble Apex Court in the case of **Bhagawati Oxygen Ltd. vs. Hindustan Copper Ltd., reported in 2005 (6) SCC 462.** In the said case, the Hon'ble Supreme Court has considered the legality and validity of the award of the arbitrator. In para 29 of the said judgment at page 474, the Hon'ble Supreme Court has considered the case of Rajasthan State Mines & Minerals Ltd. (supra) and observed as under:

"Para 29. In Rajasthan State Mines & Minerals Ltd v. Eastern Engineering Enterprises, this Court after considering several decisions on the point, held that if an arbitrator has acted arbitrarily, irrationally, capriciously or beyond the terms of the agreement, an award passed by him can be set aside. In such cases, the arbitrator can be said to have acted beyond the jurisdiction conferred on

him.”

18.1) In the above said judgment of Bhagawati Oxygen Ltd. (supra), the Hon'ble Apex Court has also considered another judgment in the case of U.P.SEB v. Searsole Chemicals Ltd, reported in (2001) 3 SCC 397 in para 30 and observed that “In U.P.SEB v. Searsole Chemicals Ltd, this Court held that where the arbitrator had applied his mind to the pleadings, considered the evidence adduced before him and passed an award, the could not interfere by reappraising the matter as if it were an appeal.”

18.2) In para 31 of the said judgment, the Hon'ble Apex Court has considered the judgment of the Hon'ble Supreme Court in the case of Indu Engineering and Textiles Ltd. v. Delhi Development Authority, reported in (2001) 5 SCC 691 and observed that “In Indu Engg. & Textiles Ltd. v. Delhi Development Authority, it was observed that an arbitrator is a judge appointed by the parties and as such the award passed by him is not to be lightly interfered with.”

18.3) In para 32 of the said judgment, the Hon'ble Apex Court has considered the judgment of the Hon'ble Apex Court in the case of Bharat Coking Coal Ltd. v. Annapurna Construction, reported in (2003) 8 SCC 154 and observed that “In Bharat Coking Coal Ltd. V. Annapurna Construction, this Court held that there is distinction between error within jurisdiction and error in excess of jurisdiction. The role of the arbitrator is to arbitrate within the terms of the contract and if he acts in accordance with the terms of the agreement, his decision cannot be set aside. It is only when he travels beyond the contract, that he acts in excess of jurisdiction in which case, the award passed by him becomes vulnerable and can be questioned in an appropriate court.”

18.4) After considering all these decisions, it may be noted that in that case, the award of the arbitrator was considered by the learned Single Judge and in that context, in para 35 at page 475, the Hon'ble Apex Court has observed that “In our opinion, however, the learned counsel for BOL is justified in submitting that really it was in the realm of appreciation and re-appreciation of

evidence. At the most all those letters go to show that HCL has some complaint against BOL and it had also disclosed its intention to purchase oxygen gas from other sources but as observed by the arbitrator, it was not proved that HCL had in fact purchased oxygen from other sources under clause 10.4. If in the light of such evidence, the arbitrator did not think it fit to allow counterclaim, it could not be said to be a case of misconduct covered by Section 30 of the Act. The learned Single Judge as also the Division Bench were, therefore, not justified in setting aside the award passed by the arbitrator dismissing the counterclaim and hence the order of the learned Single Judge is confirmed by the Division Bench deserves to be set aside by resorting dismissal of counterclaim of HCL by the arbitrator.

19. In view of the aforesaid judgments of the Hon'ble Apex Court in the case of Rajasthan State Mines and Minerals Ltd. (supra) and in the case of Bhagawati Oxygen Ltd. (supra), when the arbitrator has not given any reasons, it appears that the Court has extremely limited jurisdiction to interfere with the order of the Trial Court. From the judgments,

it appears, the award can be challenged and can be set aside only if arbitrator acted beyond jurisdiction i.e. beyond terms of reference or if there is a specific terms in the terms of contract or the law which does not permit or give the arbitrator the power to decide the dispute raised by the claimant and if the arbitrator decides contrary to the terms of contract or contrary to the terms of law, then the award passed by the arbitrator in the said respect thereof would be challenged on the ground of excess of jurisdiction. The learned counsel for the appellant has not been able to show from the findings of the arbitrator as well as from the findings of the learned Trial Judge that the arbitrator has either acted beyond his terms of reference or in excess of jurisdiction.

20. This Court has also considered the judgment of the Division Bench of this Court (Coram:J.N.Bhatt and K.M.Mehta, J.) in the case of **Union of India vs. H.K.Dhruv and another, reported in 2002 (1) GLH 617.** In the said case, the Division Bench of this Court has considered the scope of interference in

the award of the arbitrator in para 16 at page 635. In the said para, the Division Bench of this Court has considered the judgment in the case of **Rajasthan State Mines and Minerals Ltd. (supra).** Further the Division Bench of this Court in para 17 at page 639 observed as under:

> “Para 17. In our view, in view of the judgment of th Hon'ble Supreme Court in Rajasthan State Mines and Minerals Ltd. case the Court has very limited jurisdiction to interfere with the award of the arbitrator, particularly where arbitrator has not given any reasons in this behalf. We have considered the agreement between the parties containing arbitration clause. In our view, the arbitrator has not committed any error while passing the award in this behalf.

20.1) Further in para 17.2, the Division Bench of this Court has observed as under:

> “Para 17.2. We have also considered Section 30 and Section 33 of the Arbitration Act and the ground for challenging the award of arbitrator

in this case arbitrator has not given any reasons and it was not open to the City Civil Court to speculate what has been awarded by the arbitrator in absence of reasons. In our view, the arbitrator has not committed any mistake apparent on the face of the record and when parties have selected arbitrator to be a Judge in dispute between them thereafter parties cannot object to his decision that arbitrator has given award incorrect. The Court cannot sit in appeal over the award of the arbitrator and, therefore, in our view, the award of the arbitrator has to be upheld and the order of the City Civil Court will have to be quashed and set aside as regards Claim Nos.4 and 5 is concerned."

21. The learned advocate for the appellant has relied upon the judgment of the Hon'ble Apex Court in the case of Union of India vs. G.S.Atwal & Co. (Asansole), reported in (1996) 3 SCC 568. In the said case, the Hon'ble Supreme Court in para 9 has observed that "...The jurisdiction of the arbitrator is founded upon the agreement between the parties. To the extent of the agreement, the

parties are bound by the decision of the arbitrator. But the arbitrator cannot enlarge the scope of his arbitration and make a non-speaking award, a lump sum amount of all claims, after enlarging his jurisdiction on non-accepted or objected claims." The learned counsel for the appellant has not been able to show that the arbitrator has enlarged the scope of his jurisdiction and therefore, this judgment does not help the appellant in this behalf.

22. The learned counsel for the appellant has also relied upon the judgment of the Hon'ble Supreme Court in the case of Grid Corporation of Orissa Ltd. and another vs. Balasore Technical School, reported in (2000) 9 SCC 552, where the Hon'ble Apex Court in para 3 of the judgment at page 556, observed that "It is not open to the court to speculate where no reasons are given by the arbitrator, as to what impelled him to arrive at his conclusion. If the dispute is within the scope of the arbitration clause it is no part of the province of the court to enter into the merits of the dispute. If the award goes beyond the reference or there is error apparent on the face of

the award it would certainly be open to the court to interfere with such an award." The learned counsel for the appellant has not been able to show how the Arbitrator has acted beyond the reference or there is an error apparent on the face of the award and therefore, this judgment is also not helpful to the appellant.

23. The learned counsel for the appellant has also relied upon the Division Bench of this Court (M.R.Calla and D.A.Mehta, J.J.) in the case of Kandla Port Trust, Trustees of Board vs. Asia Foundation & Construction Ltd., reported in 2001 (3) GLH 45. In that case, after considering various judgments of the Hon'ble Apex Court, in para 11 at page 51, the Court has observed as under:

> "If we apply the well recognized principle, that as and when the Arbitrator has exceeded the scope of the subject-matter of Arbitration Agreement, the Award cannot be sustained, on the facts of the present case, we find that so far as the question of fault in design is concerned, the same was kept out of the scope

of Arbitration in terms of Clause 62(i). The question of fault in design was raised as a dispute by AFCONS to claim the withheld payments. The contention that it was the defence raised by AFCONS against the stand of KPT and, therefore, it could be considered by the Umpire while passing the Award does not appear to be correct and tenable proposition in our view for the simple reason that what cannot be done directly cannot be done in an indirect manner and, therefore, when the question of defect in design could not be made a ground so as to reject the claim of KPT and accept the claim of AFCONS so as to pass an Award in favour of AFCONS and against the KPT. In our considered opinion the Umpire has clearly and certainly exceeded the scope of the subject-matter of Arbitration Agreement in the facts of the present case. We, therefore, find that the Award passed by the Umpire, as has been made the rule of the Court, cannot be sustained in the eye of law and the matter, therefore, deserves to be remanded back to the Umpire to reconsider the Reference de novo without taking into consideration the AFCONS's

plea with regard to the fault in design, in terms of the Contract and in the light of the observations made in this order as above and we order accordingly."

24. I have considered the facts and circumstances of the case. I have also considered Section 30 of the Arbitration Act which provides for grounds for setting aside the awards and Section 33 of the Arbitration Act which provides that the award to be decided by the application made by the concerned party. I have considered the judgments of the Hon'ble Apex Court in the case of **Rajasthan State Mines and Minerals Ltd. (supra), Bhagawati Oxygen Ltd. vs. Hindustan Copper Ltd.,** Division Bench Judgment of this Court in the case of **Union of India vs. H.K.Dhruv and others** and other judgments cited by the learned advocate for the appellant.

25. Under Section 30, particularly clauses (a) (b) (C) of Section 30, the award can be set aside on the following grounds:

(a) Misconduct

(b) Award made after court's order superseding

arbitration.

(c) Award made after notice to arbitrators of the institution of suit relating to the subject-matter of arbitration.

(d) If the award is improperly procured and

(e) If the award is otherwise invalid.

25.1) From the language of Section 30 and 33, it is obvious that the Court would exercise this jurisdiction rarely and only where the award may be patently illegal and void. In other words, as held by the Hon'ble Supreme Court, whenever the award is beyond terms of reference or award is in excess of jurisdiction. All these grounds are considered by this Court. The learned counsel for the appellant has not urged any ground regarding the subject matter of arbitration. The learned advocate is not able to show that the arbitrator has acted beyond his terms of reference or in excess of jurisdiction. Words, used in this section that “an award shall not be set aside except on one or more of the following grounds: are imperative and take away the jurisdiction of the court to set aside an award on any other ground. In other words the grounds mentioned in this section are exhaustive.

The jurisdiction of the court to examine correctness of arbitration award is limited by the provisions of the Arbitration Act, which are based on the general principle applicable to arbitration proceedings. An arbitrator is a tribunal selected by the parties, and his adjudication is binding on them. If it were permissible for the Court to re-examine the correctness of the award, the entire proceeding would amount to an exercise in futility. The grounds on which an award can be set aside are limited by statute and section 30 of the Act in mandatory terms declares that an award shall not be set aside on other grounds. It is also not open to the court to speculate, where no reasons are given by the arbitrator, as to the reasons which led him to his conclusion. The court cannot proceed to determine whether the conclusion is right or wring, on an assumption that the arbitrator must have proceeded by a certain process of reasoning.

26. This all shows that the Court has very limited jurisdiction in this behalf where the award is non-speaking award. The learned counsel has challenged the judgment on the ground that arbitrator has passed an award beyond his jurisdiction. However,

after considering the facts of the case and judgments cited above, it cannot be said that merely because of error of law, arbitrator has acted without jurisdiction or beyond his terms of reference.

27. In the present case, arbitrator has given his award and considered the factual and legal contentions which is also been considered by the learned Trial Judge. There is no question of holding that the arbitrator has acted beyond his terms or the arbitrator has acted beyond his jurisdiction. Both these contention of the learned counsel for the appellant are misplaced and the Court has extremely limited jurisdiction in this behalf. In view of these decisions which I have referred earlier, the same shows that the Court has very limited jurisdiction in this behalf. It cannot be said that merely because error of law, the arbitrator has acted without jurisdiction and beyond his terms and reference.

28. In view of the same, the aforesaid decision, second contention of the appellant raised by the learned counsel is rejected.

29. It may be noted that arbitrator has granted 18% interest. However, the learned Trial Court has reduced the same by 9%. So, even on the part of the interest also, this Court does not interfere with the award of the Trial Court and therefore, the appeal is required to be dismissed.

30. In this case, the Arbitrator has granted interest at the rate of 18% and the Trial Court has granted interest at the rate of 9%. So, the award of 18% interest has not been further considered and the Trial Court has reduced the same by 9% and therefore, this Court is not required to interfere with this matter.

31. In view of the aforesaid conclusion, final conclusions regarding contentions raised are as under:

31.1) As regards non-speaking award, finding of the learned Trial Judge is upheld on the reasoning given by the learned Trial Judge. The finding of the learned Trial Judge is also upheld on the basis of the Constitution Bench judgment in the case of

Raipur (supra) and other judgments which I have referred earlier and therefore, first contention of the appellant is rejected.

31.2) As regards second contention that the arbitrator has acted beyond his jurisdiction or in excess of jurisdiction, the same is also rejected in view of the discussion in the main judgment particularly on the basis of the judgment of the Hon'ble Apex Court in the case of Rajasthan State Mines and Minerals Ltd. (supra) and other judgments which I have referred in this behalf.

32. In view of the above facts and circumstances of the case and in view of the judgments cited above, the finding of the learned Trial Judge dated 18/2/1993, in which the learned Judge has dismissed the Misc. Civil Application No.957 of 1988 and 833 of 1988 which has been considered and modified by the learned Judge, is completely upheld and the present appeal is dismissed with costs.

(K.M.Mehta, J.)

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